

106TH CONGRESS
2D SESSION

H. RES. 480

Urging the Attorney General to take no irrevocable action with respect to Elian Gonzalez until a hearing concerning an asylum application is held.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2000

Mr. SHADEGG submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Urging the Attorney General to take no irrevocable action with respect to Elian Gonzalez until a hearing concerning an asylum application is held.

Whereas the mother of Elian Gonzalez sacrificed her life in fleeing Cuba to bring her son to a free country;

Whereas on November 25, 1999, Elian was rescued at sea by a Florida fisherman and the following day the Immigration and Naturalization Service paroled Elian into the care of his great-uncle, Lazaro Gonzalez;

Whereas on December 1, 1999, the Immigration and Naturalization Service stated: “Although INS has no role in the family custody decision process, we have discussed this case with the State of Florida officials who have confirmed that the issue of legal custody must be decided by its State court. However, Elian will remain in the U.S.

until the issues surrounding his custody are resolved. If Elian's family is unable to resolve the question of his custody, it is our understanding that the involved parties will have to file in Florida family court. Either Elian's father in Cuba or his U.S.-based family members may initiate proceedings. Once proceedings have been initiated, it is likely that the court will appoint a guardian ad litem, i.e., someone who will specifically represent Elian's interests in the custody determination process.”;

Whereas on December 15, 1999, Elian Gonzalez filed an application for asylum under section 208 of the Immigration and Nationality Act, which provides that “any person” can file such an application;

Whereas on January 5, 2000, the Immigration and Naturalization Service announced that Elian's asylum application was being withdrawn at the request of his father in Cuba, without a hearing either on the merits of the asylum application or on who should represent Elian in the asylum case;

Whereas on January 10, 2000, the Florida State court with jurisdiction over child custody cases granted temporary legal custody of Elian to his great-uncle, Lazaro Gonzalez, finding that the petition for custody contained “sufficient verified allegations that, if emergency relief is not granted and Elian is returned to Cuba, he would be subjected to imminent and irreparable harm, including loss of due process rights and harm to his physical and mental health and emotional well-being”;

Whereas on January 11, 2000, Lazaro Gonzalez filed for political asylum on Elian's behalf and the Immigration and Naturalization Service subsequently rejected this application for asylum, again without a hearing;

Whereas on January 19, 2000, Elian Gonzalez filed a civil action in Federal court asserting that section 208 of the Immigration and Nationality Act guarantees “any person” the right to apply for asylum, that the Immigration and Naturalization Service lacked the authority to reject his applications for asylum, and that the agency was required to adjudicate his asylum applications;

Whereas in March 2000, the Federal court ruled that the Attorney General has discretion either to accept or to reject Elian’s applications for asylum;

Whereas in March 2000, Elian Gonzalez filed an emergency motion for an expedited appeal which was accepted by the Federal appeals court;

Whereas the case before the Federal court is limited to whether the Attorney General had discretion to reject Elian’s asylum cases, and will not include a determination on the merits of his asylum claim or on whether it would be in “the best interest of the child” to remain in the United States or to return to Cuba;

Whereas the Attorney General’s decision to allow Elian’s father to withdraw his asylum application was taken after an interview with the father in Cuba, but without any contact with Elian himself on the part of Department of Justice officials;

Whereas the Attorney General has requested that Elian’s temporary legal custodian and other family members meet with three “psychological experts” designated by the Attorney General, but only for the purpose of determining how to transfer custody of Elian to his father, not for the purpose of considering how such a transfer would affect Elian’s mental and physical health;

Whereas up to the present time no court has held a final hearing on the question of the best interest of the child;

Whereas such a hearing is necessary to resolve important disputed questions of fact, including whether Elian, if he were to return to Cuba, would be in the care and custody of his father or of the Cuban Government, and to determine on the basis of such facts whether this case is an exception to the general rule that it is in a child's best interest to be in the custody of his surviving natural parent; and

Whereas a decision by the Attorney General to return Elian to Cuba would be irrevocable for as long as the present government of Cuba is in power: Now, therefore, be it

1 *Resolved*, That the House of Representatives urges
 2 the Attorney General of the United States to take no irrev-
 3 ocable action with respect to Elian Gonzalez until a hear-
 4 ing is held to determine whether authorizing Elian Gon-
 5 zalez to file an application for asylum is in his best inter-
 6 est.

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